
Chapter 4 Victims' Rights Legislation

Abstract

In 1996, the South Carolina legislature cast a new actor in the drama known as the judicial system. This previously excluded actor is the victim of the crime---a participant whose presence is now acknowledged as essential to the process, a participant whose presence has revolutionized the criminal justice system and forever changed the process.

Through a series of constitutional amendments and statutory implementations, the General Assembly guaranteed that the voices of victims will always be prominent in the procedures of South Carolina courts. [FN1]. The purpose of this chapter is to present an overview of South Carolina victims' rights legislation in order to assist victim advocates in their efforts to protect the rights of crime victims in our state.

Learning Objectives

Upon completion of this chapter, students will understand the following concepts:

- The history of crime victim legislation in South Carolina
- The rights guaranteed to South Carolina crime victims pursuant to the South Carolina Crime Victims' Rights Amendment
- The rights guaranteed to South Carolina crime victims pursuant to the amendment's implementation statutes

I. SOUTH CAROLINA VICTIMS' RIGHTS AMENDMENT

The 1996 Victims' Rights Amendment was not South Carolina's first attempt at creating rights for crime victims. In 1984, the legislature passed a series of statutes known as the Victim's and Witness's Bill of Rights. These statutes were often overlooked and unenforced by state officials. Still, many citizens and lawmakers believed that victims deserved greater participation and protection in the criminal justice system and the process to elevate those rights to constitutional status was initiated. Our state constitutional amendment seeks to protect the rights of crime victims and to accord them due process.

The SCVRA, found at Article I, Section 24 of the South Carolina State Constitution has three main features:

- 1). The enumeration of guaranteed constitutional rights
- 2). A provision barring civil causes of action against any public employee or entity
- 3). Parameters for applying the provisions of the amendment

The Victims' Bill of Rights contains a broad definition of victim: a victim is a "person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him." S.C. Const. Art. I, Section 24 (C) (2). "Victim" also includes "the person's, spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.." Id. The definition of "victim" in the Act is slightly narrower. See S.C. Code Ann Section 16-3-1510 (1) (excluding persons who are investigated for, charged with, or convicted of the offense in question for the definition of "victim"). The Victims' Bill of Rights appears to apply to all crimes. In contrast, the Act excludes certain property crimes. See S.C. Code Ann. Section 16-3-1510 (3) (excluding property offenses which do not exceed \$1,000.00 in damages).

Among other things, the SCVRA grants constitutional protection to victims, who are defined under the amendment as people who suffer "direct or threatened physical, psychological, or financial harm as a result on the commission or attempted commission of a crime against [them]. See S.C. Const., Art I, Section 24 (C) (2). The amendment also provides that a victim's spouse, child or legal representative are also constitutionally protected victims. Id.

Under the SCVRA, victims must "be treated with fairness, respect, and dignity." S.C. Const., Art I, Section 24 (A) (1). The amendment also requires state officials to provide victims with adequate information about their rights, protect victims from abuse and ensure a reasonable disposition and conclusion of victims' cases. Additionally, they must inform victims about judicial proceedings and their rights to appear and speak at such proceedings.

The SCVRA creates a right to prompt and full restitution from the offender but does not create a civil cause of action against state employees or agencies for failing to protect or enforce victims' rights. The writ of mandamus petitioning the Supreme Court for enforcement of compliance is the only remedy available to victims if their rights are violated.

The amendment provides for the following core victims' rights, which are discussed in greater detail in the chapter entitled "Core Victim Rights:"

1. The right to be treated with fairness, respect and dignity
2. The right to information
3. The right to notice
4. The right to be present
5. The right to confer
6. The right to be heard
7. The right to a reasonable and prompt disposition
8. The right to protection/including information about release
9. The right to restitution
10. The right to compensation

Below is the full text of the South Carolina Victims Rights Amendment, also known as the Victims' Bill of Rights:

South Carolina Victims' Rights Amendment/ Victims' Bill of Rights

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

- (1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute;
- (2) be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped;
- (3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present;
- (4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail;
- (5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing;
- (6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;
- (7) confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;
- (8) have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial;

(9) receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders;

(10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;

(11) a reasonable disposition and prompt and final conclusion of the case;

(12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

(B) Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a willful failure to comply with a writ of mandamus is punishable as contempt.

(C) For purposes of this section:

(1) A victim's exercise of any right granted by this section is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(2) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term "victim" also includes the person's spouse, parent, child, or lawful representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.

(3) The General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(4) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the General

Assembly or retained by victims. (1998 Act No. 259, Section 1, eff February 17, 1998.)

II. Implementing the SCVRA through Victims' Rights Legislation

The adoption of the SCVRA was only the first step in providing rights to crime victims. To implement the SCVRA, the General Assembly passed several accompanying statutes. See S.C. Code Ann. Sections 14-1-206 to 208, 14-1-211, 16-3-1210, 16-3-1350, 16-3-1505 -1565 (Law. Co-op. Supp. 1998). In conjunction with the SCVRA, these statutes trigger the funding mechanisms for the SCVRA and detail a vast array of specific services to which victims are entitled.

The foundation of the SCVRA and its enabling statutes rests on four cornerstones: notification, information, consultation, and indemnification and protection. Each phase builds on the one before it and for the crime victim to be fully prepared for each level in the criminal justice process, the statutory requirements of each stage must be fulfilled.

A. **Notification:** As stated above, crime victims are entitled to due process. Notification is an essential element of due process and a vital part of crime victims' rights. Pursuant to statute, "reasonable attempts" to notify victims are required of various agencies at "each hearing, trial or other proceeding" at each level of the process. S.C. Code Ann. Section 16-3-1535(D)-1540 (I). In other words, the victim is entitled to go wherever the defendant goes in terms of proceedings.

Listed below are the specific events to which a **victim must receive prior notification** and the pertinent statutory site.

1. Arrest or detention of the defendant , See Section 16-3-1525(A)
2. Bond or pretrial release hearing or procedure, See Section 16-3-1525 (A), (H)(1), (I)(1)
3. Release of a juvenile offender to his parent or guardian, See Section 16-3-1525(B)
4. Juvenile detention hearing, See Section 16-3-1525 (J)(1)
5. Preliminary hearing, See Section 16-3-1525(K)
6. Referral of a juvenile case to circuit court, See Section 16-3-1545 (A)
7. Canceled or rescheduled hearings, See section 16-3-1545(I)
8. Release, escape, or transfer of the accused to a less secure facility, See Section 16-3-1530(A), (B), (C), (D).

9. Post-conviction proceedings affecting the probation, parole, or release of the offender and of the victims' right to attend and comment at these proceedings, see Section 16-3-1560 (A), (E), (F).

B. **Information:** Simply notifying a crime victim is insufficient under the law. Victims also have the right to be informed so that they can understand the criminal justice process and thereby participate in the process in a meaningful way. The intent of the statutes is not merely the provision of formal information of the criminal justice process but also practical and detailed information.

Victims are entitled by law to receive information which includes, but is not limited to, a free copy of the incident report and a document describing their constitutional rights and responsibilities, assistance providers, compensation benefits and their rights regarding harassment. See S.C. Code Ann. Section 16-3-1520(A). Additionally, agencies must make reasonable efforts to keep victims informed of the status of their case.

Summary court judges are required to give victims a full explanation of their participation rights in all hearings, their right to counsel and their right to pursue civil remedies. Victims are to be advised of their right to submit a victim impact statement and if requested, the victim must be provided with the statement form. Furthermore, the law requires the summary court judge to provide the victim with information on the practices and procedures of that court. See S.C. Code Section 16-3-1545.

S.C. Code Ann. Section 16-3-1545 requires the prosecutor, the Department of Corrections, the Department of Probation, Parole and Pardon, the Board of Juvenile Parole, and the Department of Juvenile Justice to provide the victim with information regarding the victim impact statement at the family court or circuit court level and during post-adjudicatory stages.

Victims also must be informed about their right to restitution, pursuant to S.C. Code Ann. Section 16-3-1555 (E). Following conviction, the Attorney General must keep the victim reasonably informed of the status of all appeals and other post-conviction proceedings. Victims also have the right to confer about these proceedings. See S.C. Code Ann. 16-3-1560(E). Victims do not possess the right to file an appeal of their own; that is left to the state.

C. **Consultation:** If a victim is to have meaningful participation in the process, it is essential that his/her voice be heard. The enabling statutes include requirements for consultation and conferencing with the victim and allow victims to give their input. This input requirement is not satisfied merely by a victim impact statement. The law requires state officials to confer with them and to give them the opportunity to express their opinions or recommendations. Victims may make recommendations at bond hearings. See S.C. Code Section 16-3-1525 (H)(1). Victim

recommendations are also allowed at detention hearings in juvenile cases (See S.C. Code Ann. Section 16-3-1525 (J)(1)) and before sentencing (See S.C. Code Ann. Section 16-3-1550(F)).

Though the law requires that prosecutors are required to discuss each case with the victim and confer with them as to the disposition of the case, victims do not have the right to decide the disposition of the case.

D. **Indemnification and Protection:** In recognition of the severe personal and economic impact on crime victims, the enabling legislation has provisions to indemnify and protect victims. Below are the services which must be offered to victims and the relevant statutory site:

1. **Information regarding local victim assistance, counselors and social services provides.** See S.C. Code Ann. Section 16-3-1545 (M)
2. **Protection from threat and harassment.** See S.C. Code Ann. Section 16-3-1525 (G),(H)(3), (I)(3),(J)(3)
3. **Intervention with creditors, employers, landlords and schools.** See S.C. Code Ann. Sections 16-3-1520 (C)-1545 (J).
4. **Confidentiality of victim information.** See S.C. Code Ann. Section 16-3-1525 (C)
5. **Transportation to and from the courthouse.** See S.C. Code Ann. Section 16-3-1525(G)
6. **Return of recovered property.** See S.C. Code Ann. Section 16-3-1535 (E).
7. **Minimal inconvenience to victims.** See S.C. Code Ann. Section 16-3-1545 (L).
8. **Medical and counseling expenses.** See S.C. Code Ann. Section 16-3-1515 (B).
9. **Lost income and out-of-pocket expenses.** See S.C. Code Ann. Section 16-3-1515(B).
10. **No employer retaliation against victims and subpoenaed witnesses.** See S.C. Code Ann. Section 16-3-1550(A)
11. **No sequestration of victims.** See S.C. Code Ann. Section 16-3-1550(B).
12. **Separate waiting areas for victims.** See S.C. Code Ann. Section 16-3-1550 (C).
13. **Closed or taped sessions for particular classes of victims.** See S.C. Code Ann. Section 16-3-1550(E).
14. **Appropriate statutory restitution.** See S.C. Code Ann. Section 16-3-1550 (G).
15. **Expert fees and subpoena service fees.** See S.C. Code Ann. Section 1555 (A).

Victims' Rights Legislation Self-Examination

- List the 10 rights guaranteed to victims under the SCVRA
- What are the four cornerstones upon which the SCVRA and its enabling legislation rest
- List the 9 specific events to which victims are entitled prior notification
- Describe what information victims are entitled to at each stage of the criminal process
- Describe when victims are entitled to confer with state officials during the criminal process
- List the various services to which victims are entitled by law
- List the types of indemnification to which victims are entitled by law

[FN1] The Hon. Marc H. Westbrook and Thad H. Westbrook, Balancing the Scales Victims' Rights in South Carolina's Justice System, South Carolina Lawyer (May/June 1999) at 26.